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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW JULIO ESTRADA,

Defendant and Appellant.

E071077

(Super.Ct.No. FWV17002795)

OPINION

APPEAL from the Superior Court of San Bernardino County. Charles J. Umeda, Judge. Affirmed with directions.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Robin Urbanski and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

In July 2017, defendant and appellant Andrew Julio Estrada yanked a gold necklace off the victim's neck and ran away with it. A jury found him guilty of one count of second degree robbery. (Pen. Code, § 211<sup>1</sup>.) The trial court sentenced him to a mitigated term of two years, imposed a variety of fines and fees, and awarded credits for custody and conduct. Defendant appealed.

On appeal, defendant's only contention is the minute order of the sentencing hearing and the abstract of judgment, which have already been corrected once, need further correction because they include a fee not ordered by the trial court. The People concede that point but argue the minute order and abstract must also be amended to properly reflect the conduct credits ordered. We agree that correction of the fees and credits is required.

### **BACKGROUND**

At the sentencing hearing, the superior court ordered defendant to pay a fee for each count (\$70), a court construction fee (\$30), a court operation fee (\$40), and victim restitution (\$300). It awarded 349 days credit for time served. As to conduct credits, the court initially indicated an award of 349 days pursuant to section 4019, but then amended that order to say those credits were instead to be calculated in accordance with section 2933.1.

The minute order and abstract of judgment included a \$727 "probation supervision fee PC1203.1(b)." However, that fee was not included in the court's oral pronouncement

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<sup>1</sup> All further statutory references are to the Penal Code.

of judgment. The minute order and abstract of judgment also recited an award of 349 days' conduct credit, an amount that would have been adjusted downward had the credits been calculated in accordance with the court's order.

In January 2019, after noticing this appeal, appellate counsel requested the trial court to strike the reference to the \$727 fee. In response, the court corrected the minute order and filed a first amended abstract of judgment. Rather than striking the fee, the court found "defendant has the present ability to pay the costs of conducting the pre-sentence investigation and preparing report of \$727." The minute order states that it had been "corrected . . . to reflect: the pre-sentence investigation findings," apparently referring to the probation report, which had recommended defendant pay \$727 to cover the investigation and report preparation costs.

### **DISCUSSION**

Defendant argues the \$727 fee must be stricken because the court did not order defendant to pay that fee at the time of sentencing. The People concede, and we agree, that the nonmandatory fee of \$727 was not ordered by the court and should be stricken from the corrected minute order and first amended abstract of judgment.

It is the oral pronouncement of the sentence that constitutes the judgment in a criminal case. (*People v. Scott* (2012) 203 Cal.App.4th 1303, 1324.) When there is a discrepancy between the oral pronouncement and the minute order or abstract of judgment, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186; *People v. Costella* (2017) 11 Cal.App.5th 1, 10.) It is well settled that courts,

including appellate courts that have properly assumed jurisdiction over a case, may correct clerical errors at any time. (*Mitchell*, at pp. 185-188.)

Here, the court's oral pronouncement of defendant's sentence did not include the \$727 fee. Accordingly, we will direct the court to correct this error in the sentencing minute order and the abstract of judgment.

As the People point out in their responsive brief, the minute order and abstract of judgment also fail to reflect the court's oral pronouncement as to the number of conduct credits to which defendant is entitled. Defendant did not reply to that argument. We agree the recital of conduct credits in the minutes and abstract must be corrected.

Section 2933.1 provides in relevant part that a defendant convicted of a violent felony as defined in subdivision (c) of section 667.5 may not be awarded conduct credits in excess of 15 percent of the actual period of confinement. (§ 2933.1, subds. (a), (c).) Robbery of all types falls within the violent felony definition. (§ 667.5, subd. (c)(9).) An erroneous calculation of credits resulting in an award in excess of those allowed by statute results in an unauthorized sentence, an issue not forfeited by a failure to object and that may be corrected on appeal. (*People v. Smith* (2001) 24 Cal.4th 849, 852; *People v. Guillen* (1994) 25 Cal.App.4th 756, 764.)

Here, the minute order and the abstract of judgment state defendant is entitled to 349 days of conduct credits. That number does not reflect the 15 percent limitation ordered by the trial court and required by section 2933.1, subdivisions (a) and (c). Defendant has 349 days of credit for time served; 15 percent of 349 is 52. The correct

number of conduct credits is 52. That amount added to the 349 days of credit for time served equals a total award of 401 days of credits. The minute order and abstract of judgment must be modified to show defendant's entitlement to 349 days of custody credit and 52 days of conduct credit for a total award of 401 days of credit.

**DISPOSITION**

The judgment is affirmed. The superior court is ordered to strike imposition of the \$727 fee pursuant to section 1203.1 and to modify the award of conduct credit to 52 days for a total award of 401 days of credit. The clerk of the court is directed to amend the sentencing minute order and abstract of judgment so as to reflect these modifications and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

FIELDS  
J.